

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed March 16, 2007. Through this response, claims 1, 2, 6, 7, and 11-15 have been amended, in the interest of facilitating prosecution on the merits, to address alleged informalities in the claims. Reconsideration and allowance of the application and pending claims 1-15 are respectfully requested.

I. Claim Rejections - 35 U.S.C. § 101

Claims 1-15 have been rejected under 35 U.S.C. § 101. With regard to claims 11-15, although Applicants respectfully disagree, Applicants have amended claims 11-15 to facilitate prosecution on the merits, hence rendering the rejection moot as to those claims. As to claims 1-10, Applicants respectfully disagree and hence traverse the rejection. The Office Action alleges (on page 2) as follows (no emphasis added):

The claims 1-10 preempt an Abstract Idea cover a 35 USC 101 Judicial Exception. In determining whether the claim is for a “practical application,” the focus is not on whether the steps taken to achieve a particular result are useful, tangible, and concrete, but rather the final result is “useful, tangible, and concrete.” The claimed method/apparatus recites only the executing or running a program and has no final “practical application” after the execution of the program.

Applicants cannot understand how an “apparatus” that includes daemon logic, an OpenGL stack, among other tangible structures of a computer system (for claims 6-10), or a method that involves interactions with computer instructions (claims 1-5) can be considered “abstract.” The OG Notice explicitly acknowledges the breadth of what may qualify as a “patentable invention”:

As the Supreme Court held, Congress chose the expansive language of 35 U.S.C. Sec. 101 so as to include “anything under the sun that is made by

man." *Diamond v. Chakrabarty*, 447 U.S. 303, 308-09, 206 USPQ 193, 197 (1980). . . .

The plain and unambiguous meaning of section 101 is that any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may be patented if it meets the requirements for patentability set forth in Title 35, such as those found in sections 102, 103, and 112. The use of the expansive term "any" in section 101 represents Congress's intent not to place any restrictions on the subject matter for which a patent may be obtained beyond those specifically recited in section 101 and the other parts of Title 35 . . . Thus, it is improper to read into section 101 limitations as to the subject matter that may be patented where the legislative history does not indicate that Congress clearly intended such limitations.

Official Gazette Notice of November 22, 2005, Section IV.A.

Despite such inclusive language, the OG Notice indicates that there are limitations to what can be patented:

Federal courts have held that 35 U.S.C. Sec. 101 does have certain limits. First, the phrase "anything under the sun that is made by man" is limited by the text of 35 U.S.C. Sec. 101, meaning that one may only patent something that is a machine, manufacture, composition of matter or a process. . . .

The subject matter courts have found to be outside of, or exceptions to, the four statutory categories of invention is limited to abstract ideas, laws of nature and natural phenomena.

Official Gazette Notice of November 22, 2005, Section IV.A. Therefore, an invention is patentable under 35 U.S.C. § 101 as long as it: (i) falls within one of the explicit statutory categories identified in 35 U.S.C. § 101 and (ii) does not comprise one of an abstract idea, a law of nature, or a natural phenomenon (i.e., the three "judicial exceptions"). Clearly the method claims 1-4 and the apparatus claims of 6-10 fall within the statutory categories of "process" and "machine," respectively. As set forth on page 9 of the specification, the daemon and associated structures may be configured in hardware or software logic. Independent claim 1 recites "storing, in the daemon, a representation of a first subset of the list commands," which is clearly not an abstract idea (e.g., such as a mathematical algorithm), but instead, a physical process that intercepts and stores data in another

location. Furthermore, independent claim 6 recites “daemon logic” in an “apparatus,” which are physical structures, not abstract ideas.

Even assuming *arguendo* that the subject matter of claims 1-10 could conceivably be considered “abstract,” the OG Notice further states that a claim that relates to an abstract idea, natural phenomenon, or law of nature may still be patentable:

While abstract ideas, natural phenomena, and laws of nature are not eligible for patenting, methods and products employing abstract ideas, natural phenomena, and laws of nature to perform a real-world function may well be.

Official Gazette Notice of November 22, 2005, Section IV.C. On that issue, the OG Notice expresses that “practical applications” of the judicial exceptions can be patentable and provides specific guidelines to aid examiners in determining whether a practical application of one of the judicial exceptions is claimed:

To satisfy section 101 requirements, the claim must be for a practical application of the Sec. 101 judicial exception, which can be identified in various ways:

- The claimed invention “transforms” an article or physical object to a different state or thing.
- The claimed invention otherwise produces a useful, concrete and tangible result, based on the factors discussed below.

Official Gazette Notice of November 22, 2005, Section IV.C.2. Therefore, if a claim is related to one of the judicial exceptions there must be an appropriate “transformation” or otherwise must be a “useful, concrete, and tangible result.” One “useful, concrete, and tangible result” of the statutory process described in claims 1-5 or the apparatus claims 6-10 is that improved graphics rendering and processing features and functionality may be implemented using off-the-shelf OpenGL stacks.

For at least the reasons set forth above, Applicants respectfully submit that claims 1-15 are directed to statutory subject matter, and hence respectfully request that the rejection be withdrawn where not rendered moot by amendment.

II. Claim Objections

Claims 1, 6, and 11 are objected to as allegedly “unclear” as a deleted part.

Although Applicants respectfully disagree, Applicants have deleted the expression in claims 1, 6, and 11, as well as like-expressions found in claims 2, 7, and 12 to facilitate examination on the merits.

III. Claim Rejections - 35 U.S.C. § 112, First Paragraph

Claims 1-15 have been rejected under 35 U.S.C. § 112, first paragraph, for allegedly failing to comply with the written description requirement. The Office Action alleges on page 3 that “the ‘newList [list commands] endList command sequence’ or the ‘callList’ command has not been specifically described for its structure or function.” Applicants respectfully disagree, and hence traverse the rejection. Applicants respectfully note that newList, endList, and callList command sequences for OpenGL are known in the art (e.g., see <http://www.glprogramming.com/blue/ch02.html>), as established in the background of Applicants’ disclosure. Further, Applicants respectfully submit that one skilled in the art would, through the benefit of Applicants’ disclosure the knowledge available in the art, understand that there was possession of the invention at the time the application was filed. Accordingly, Applicants respectfully request that the rejection be withdrawn.

IV. Claim Rejections - 35 U.S.C. § 112, Second Paragraph

Claims 1-15 have been rejected under 35 U.S.C. § 112, second paragraph, for allegedly failing to comply with the written description requirement. Applicants respectfully disagree, and hence traverse the rejection.

With regard to the allegation of unclarity between the proper antecedent basis between “list commands” in lines 1 and 4 in claim 1, Applicants respectfully disagree and

note that there is no requirement that claim terminology in the body of a claim needs to establish antecedent basis with terminology in the preamble. Accordingly, Applicants respectfully request that the objection be withdrawn in this regard.

With regard to the allegation of unclarity between the “callList command” in line 14 and the “callList command” in line 10 in claim 1, Applicants respectfully disagree. The terminology preceding callList command in line 10 refers to an “intercepted” callList command, whereas the terminology preceding the callList command in line 14 refers to “at least one” callList command, which are clearly distinguished. Accordingly, Applicants respectfully request that the objection be withdrawn in this regard.

With regard to the allegation of unclarity between a “display list” in line 8 and the display list commands” in line 1 in claim 1, Applicants respectfully disagree and note that there is no requirement that claim terminology in the body of a claim needs to establish antecedent basis with terminology in the preamble. Accordingly, Applicants respectfully request that the objection be withdrawn in this regard.

With regard to the allegation of unclarity between “list commands” in line 4 and line 1 in claim 6, Applicants respectfully disagree and note that there is no requirement that claim terminology in the body of a claim needs to establish antecedent basis with terminology in the preamble. Accordingly, Applicants respectfully request that the objection be withdrawn in this regard.

With regard to the allegation of unclarity between the “callList command” in line 15 and the “callList command” in line 11 in claim 6, Applicants respectfully disagree. The terminology preceding callList command in line 11 refers to an “intercepted” callList command, whereas the terminology preceding the callList command in line 15 refers to “at least one” callList command, which are clearly distinguished. Accordingly, Applicants respectfully request that the objection be withdrawn in this regard.

With regard to the allegation of unclarity between a “display list” in line 9 and the display list commands” in line 1 in claim 6, Applicants respectfully disagree and note that there is no requirement that claim terminology in the body of a claim needs to establish antecedent basis with terminology in the preamble. Accordingly, Applicants respectfully request that the objection be withdrawn in this regard.

With regard to the allegation of unclarity between “list commands” in line 6 and line 3 in claim 11, Applicants respectfully disagree and note that there is no requirement that claim terminology in the body of a claim needs to establish antecedent basis with terminology in the preamble. Accordingly, Applicants respectfully request that the objection be withdrawn in this regard.

With regard to the allegation of unclarity between the “callList command” in line 16 and the “callList command” in line 12 in claim 11, Applicants respectfully disagree. The terminology preceding callList command in line 12 refers to an “intercepted” callList command, whereas the terminology preceding the callList command in line 16 refers to “at least one” callList command, which are clearly distinguished. Accordingly, Applicants respectfully request that the objection be withdrawn in this regard.

With regard to the allegation of unclarity between a “display list” in line 10 and the display list commands” in line 3 in claim 11, Applicants respectfully disagree and note that there is no requirement that claim terminology in the body of a claim needs to establish antecedent basis with terminology in the preamble. Accordingly, Applicants respectfully request that the objection be withdrawn in this regard.

V. Drawing Objections

Applicants acknowledge the drawing objection noted by the Examiner on the Office Action Summary Sheet. In response thereto, Applicants have included with this response “Replacement Sheets” to replace the originally filed, informal Figures 1-3 with formal

Figures 1-3 set forth in the "Replacement Sheets". Accordingly, Applicants respectfully request that the drawing objection be withdrawn.

CONCLUSION

Applicants respectfully submit that Applicants' pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

/dr/

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